

1 William D. Hyslop
2 United States Attorney
3 Eastern District of Washington
4 Patrick J. Cashman
5 Assistant United States Attorney
6 Post Office Box 1494
7 Spokane, WA 99210-1494
8 Telephone: (509) 353-2767

9
10 UNITED STATES DISTRICT COURT
11 FOR THE EASTERN DISTRICT OF WASHINGTON

12 UNITED STATES OF AMERICA,

13 Plaintiff,

1:19-CR-02058-SMJ-1

14 vs.

15 MIGUEL NAVARRETE
16 (a/k/a "Cholo"),

17 Defendant.

Government's Response to
Defendant's Motion to Disclose
Evidence Pursuant to Fed. R. Evid.
404 & 609

18 Plaintiff, United States of America, by and through William D. Hyslop, United
19 States Attorney for the Eastern District of Washington, and Patrick J. Cashman,
20 Assistant United States Attorney for the Eastern District of Washington, submits the
21 following Response to Defendant's Motion for Disclosure. (ECF No. 101).

22 **I. INTRODUCTION**

23 The Defendant requests notice from the United States of the evidence it intends
24 to offer pursuant to Fed. R. Evid. 404(b) and 609.

25 **II. BACKGROUND**

26 The United States incorporates the factual background provided in ECF No.
27 110 for purposes of this responsive pleading.

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Government's Response to Defendant's Motion to Disclose Evidence Pursuant to Fed.
R. Evid. 404 & 609 - 1

III. DISCUSSION

i. Notice of Intent to Offer 404(b) and 609 Evidence

Local Criminal Rule 16 states:

[n]o later than twenty-eight (28) days prior to trial, the government shall:...(8) Provide a summary of any evidence of other crimes, wrongs, or acts which the government intends to offer under Federal Rule of Evidence 404(b), in sufficient detail that the court may rule on the admissibility of the proffered evidence, if challenged; and (9) Provide a list of convictions the government intends to offer under Federal Rule of Evidence 609 so the court may rule on their admissibility, if challenged.”

The United States intends to comply with the local criminal rule and the Federal Rules of Evidence and will provide appropriate notice in a separate filing.

ii. Evidence of Defendant’s street name or moniker is admissible.

The United States addressed the issue raised by the Defendant in responsive pleadings to Defendant Vargas’ motions *in limine*. (ECF No. 110). In the interest of brevity, the United States incorporates the response in ECF No. 110 into this pleading.

Specifically, the United States intends to offer testimony that the Defendants in this case used street names or monikers to describe themselves. More specifically, the Defendant Navarrete is known as “Cholo.” The testimony the United States seeks to elicit is probative of a material issue in this case and is not unfairly prejudicial. Defendant argues that all “gang evidence” should be excluded as “more prejudicial than probative.” Moreover, the use of this testimony is appropriate in the context of Fed. R. Evid. 404(b) because it is being offered not to prove action in conformity with but rather to prove identity. Both the Supreme Court and the Ninth Circuit have ruled that “evidence of gang membership is admissible when it is relevant to a material issue in the case.” *United States v. Easter*, 66 F.3d 1018, 1021 (9th Cir. 1995) (admissible on the issue of defendant’s

1 identity) (citing *United States v Abel*, 469 U.S. 45 (1984) (admissible to impeach for
2 bias); *United States v. Santiago*, 46 F.3d 885 (9th Cir. 1995) (admissible to show
3 motive for crime); *United States v. Fagan*, 996 F.2d 1009, 1015 (9th Cir. 1993)
4 (admissible to buttress policeman's ability to identify defendant).

5 IV. CONCLUSION

6 Based on the foregoing, the United States will comply with Fed. R. Evid
7 404(b) and 609 as well as LCrR 16.

8 Dated: March 27, 2020.

9
10 William D. Hyslop
United States Attorney

11
12 s/ Patrick J. Cashman
13 Patrick J. Cashman
Assistant United States Attorney
14
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16 CERTIFICATE OF SERVICE

17 I hereby certify that on March 27, 2020, I electronically filed the foregoing with
18 the Clerk of the Court using the CM/ECF system which will send notification of such
19 filing to the following:

20 Ken Therrien: kentherrien@msn.com
21 Rick Smith: rasmith@house314.com
22 Rick Hernandez: rick@rickhernandezlaw.com
23 Troy Lee: troylee@troyleelaw.com

24
25 s/ Patrick J. Cashman
Patrick J. Cashman
Assistant United States Attorney
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